

TOWN OF TIVERTON
ZONING BOARD OF REVIEW MINUTES

FEBRUARY 3, 2010

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, February 3, 2010 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Jay Jackson, Susan Krumholz, Lise Gescheidt, Richard Taylor and Michael Mello, first alternate.

Also present were: Peter Ruggiero, Town Solicitor, Gareth Eames, Building Inspector and Sally Ferreira, Court Reporter.

1. A petition has been filed by Millenium Renewable Energy, LLC by their Attorneys, Silva, Thomas, Martland & Offenberg, LTD of Middletown, RI requesting a special use permit to Article IV Section 5.d. of the Tiverton Zoning Ordinance in order to construct a 343 foot wind turbine tower at Fish Road, Tiverton, RI being Maps 1-12 & 2-11 Block 92 Card 17 on the Tiverton Tax Assessor's maps whereby a special use permit is required in a R40 zoning district.

DECISION: Attorney David Martland on behalf of Millenium Renewable Energy came before the Board and requested a one month continuance to the regularly scheduled meeting in March due to the unavailability of his engineer. There was no discussion from the Board. Ms. Gescheidt made a motion to continue this matter until next month. Mr. Jackson seconded. The vote was unanimous. The Chairman informed the audience members this meeting constitutes a public hearing of the continuation and people do not receive a letter indicating the continuation. Voting were: Chairman David Collins, Jay Jackson, Susan Krumholz, Lise Gescheidt and Richard Taylor.

2. A petition has been filed by Millenium Renewable Energy, LLC by their Attorneys, Silva, Thomas, Martland & Offenberg, LTD of Middletown, RI requesting a variance to Article V Section 1 of the Tiverton Zoning Ordinance in order to construct a 343 foot wind turbine tower at Fish Road, Tiverton, RI being Maps 1-12 & 2-11 Block 92 Card 17 on the Tiverton Tax Assessor's maps exceeding maximum height which is currently allowed in a R40 zoning district.

DECISION: Attorney David Martland on behalf of Millenium Renewable Energy came before the Board and requested a one month continuance to the regularly scheduled meeting in March due to the unavailability of his engineer. There was no discussion from the Board. Ms. Gescheidt made a motion to continue this matter until next month. Mr. Jackson seconded. The vote was unanimous. The Chairman informed the audience members this meeting constitutes a public hearing of the continuation and people do not receive a letter indicating the continuation. Voting were: Chairman David Collins, Jay Jackson, Susan Krumholz, Lise Gescheidt and Richard Taylor.

3. A petition has been filed by Richard Tosi of 248 Nanaquaket Road, Tiverton, RI requesting a variance to Article V Section 1 and Article VI Section 3.b. of the Tiverton Zoning Ordinance in order to allow an already partially constructed 22' x 26' storage shed to remain located at 248 Nanaquaket Road, Tiverton, RI being Map 1-9 Block 90 Card 9 on the Tiverton Tax Assessor's maps closer to the side yard.

DECISION: Before beginning to hear this petition, the Chairman stated Mr. Lafazia was sitting the previous month and he is not present this evening so rather than having a regular member sit, Mike Mello the first alternate who was present last month will sit and hear this petition. At this time, Mr. Tosi introduced his engineer, Byron Holmes of Holmes Engineering. The Chairman asked Mr. Tosi if he has located the building permit. Mr. Tosi stated he did not find the white piece of paper but he does have his canceled check and the permit number which is 07848-01. Mr. Tosi went on to say he has a letter from the original contractor who in 2001 did the site work and the contractor states in the letter that he only did the work after seeing the original permit from the Inspector's office. Mr. Tosi stated he has copies of that letter and will submit it if the Board.

The Chairman asked Mr. Eames if there was any way of tracking down this building permit. Mr. Eames answered the Building Inspector's office has searched the files and there is no record of a building permit for this structure having been issued. Mr. Eames went on to say Jodi Roy from the Inspector's Office keeps these files and is present tonight if the Board has any questions. The Chairman asked if the permit number given can be cross-checked and Mr. Eames stated the building permits that were issued a while ago were not put into a computer system because there was no computer system then.

At this time, Mr. Tosi's engineer was sworn in and presented testimony. Mr. Byron Holmes of Holmes Engineering, 622 Berkeley Street, Berkeley, Massachusetts stated Mr. Tosi contacted him asking for his opinion regarding the building that's under construction on his property with the understanding there is a cease and desist order on that structure. Mr. Holmes went on to describe the property and gave his opinion regarding the proper placement of the structure. He explained there is an existing dry well and beyond that further south is a septic system neither of which are conducive to having a garage placed on them. He concluded by saying there really is no other location to move the building because it would require the driveway to be even longer than it is now and also, as you go further south you will run into wetland issues.

The Chairman asked Mr. Tosi why he needs the structure and Mr. Tosi answered it's for storage of lawn equipment and a 14 foot trailer. Mr. Mello asked how far along is this structure built and Mr. Holmes responded the garage doors are not on but the roof is on, the walls are up and the Tyvek is on.

Mr. Taylor reminded the Board they were supposed to have a site plan signed by a registered surveyor. The previous plan did not show the ISDS system so a decision could not be made if that was an appropriate place to put the building. Mr. Holmes stated he has an updated site plan he generated that he would like to submit. Ms. Gescheidt

reminded Mr. Holmes under procedural rule the Board has to receive any and all documents for consideration ten days before the hearing. Mr. Holmes stated he was not aware of that rule.

Kathleen Hughes, an abutter, introduced herself and stated this is a two-story building that is literally right in front of her living room. She furnished the Board with pictures taken from her property showing the construction. These pictures were admitted as Exhibit A. Ms. Hughes reminded the Board she submitted a letter and reiterated her concerns stated in the letter. The Chairman asked Ms. Hughes to read the letter into the record. At this time, Ms. Hughes read her letter that had been filed. Ms. Gescheidt stated this petition troubles her due to the fact there is no permit and one has not been provided, it's so close to the neighbor and there are objections from abutting landowners.

Ann Tosi introduced herself and stated that along Nanaquaket there are a lot of structures that are right next to property lines. She went on to say when this construction was started in 2001, the setback was 6 feet. Ms. Tosi concluded by saying this structure will fit in with the neighborhood. Ms. Gescheidt pointed out under the Zoning Code, the Board cannot consider what else is in the neighborhood because the petition has to stand on its own merit.

At this time Mr. Holmes requested a continuance until the April meeting so that he can update the drawings and provide the information requested.

Mr. Taylor made a motion to deny the request for continuance due to the fact it was very clear at the last meeting of what the Board was asking for and the petitioner failed on all counts to provide any of the requested information. Ms. Gescheidt seconded Mr. Taylor's motion. The vote was four to one. Voting in favor to deny were: Lise Gescheidt, Jay Jackson, Mike Mello and Richard Taylor. Chairman David Collins opposed. The motion carried.

At this time, the Board went into Executive Session and deliberated. Ms. Gescheidt made a motion to deny the petitioner's request due to the fact there's been no proof there was an earlier permit, the objections both in written form and testimony on the record of Mrs. Hughes, given the expanse of the property there is no reason to grant relief and the presence of other non-conforming uses in the area are not relevant to the Board's decision. Mr. Taylor seconded the motion. The vote was unanimous. Voting were: Chairman David Collins, Lise Gescheidt, Jay Jackson, Mike Mello and Richard Taylor.

4. A petition has been filed by Awashonks Realty, Inc. by its Attorney, James A. Donnelly of Fall River, Ma requesting a dimensional variance to Article V Section 1 of the Tiverton Zoning Ordinance in order to construct a new home at West DeMello Drive, Tiverton, RI being Map 4-3 Block 223 Card 32 on the Tiverton Tax Assessor's maps closer than the front yard setback currently required in a R80 zoning district.

DECISION: Attorney James Donnelly for Awashonks Realty, Inc. joined by Mark DeMello who is the president and treasurer of Awashonks were present. Mr. Donnelly

stated testimony will be given by Mr. DeMello and requested he be sworn in. Mr. DeMello was sworn in. Mr. Donnelly asked if he could exchange the plans that the Board had before them for an exact same site plan except the seal on it of Mr. Higorani will be different. The new stamped site plan will say land surveyor as opposed to professional engineer. The Board had no objection. The new plans were marked Exhibit A.

Mr. Donnelly introduced into evidence an ISDS plan approved by the DEM and prepared by William Smith for Awashonks Realty, Inc. Ms. Gescheidt asked if this was something new for the Board to review and Mr. Donnelly responded it is. Mr. Taylor objected due to the fact there is no time to look it over. Ms. Gescheidt stated she objected also because it is not fair to the Board. The Chairman asked Mr. Donnelly if he had other evidence he was going to be presenting tonight and Mr. Donnelly responded he has a property record card showing the property in question as being a buildable lot. Ms. Gescheidt asked Mr. Donnelly why the Board was receiving this information on the date of the hearing. Mr. Donnelly answered he did not have the ISDS plan at the time the petition was filed. Ms. Gescheidt informed Mr. Donnelly the Board has rules of procedure that require exhibits to be submitted in advance of the hearing so the Board can make an informed decision.

At this time Mr. Donnelly requested a continuance. The further documents were accepted by the Board to be considered at the next meeting. The property record card was marked Exhibit B and the ISDS plan was marked Exhibit C.

Ms. Gescheidt made a motion to grant the request for continuance. Mr. Mello seconded. The vote was unanimous. Voting were: Chairman David Collins, Lise Gescheidt, Jay Jackson, Susan Krumholz and Richard Taylor.

5. A petition has been filed by Indian Head Realty, Inc. by its Attorney, James A. Donnelly of Fall River, Ma requesting a dimensional variance to Article V Section 1 of the Tiverton Zoning Ordinance in order to construct a new home at West DeMello Drive, Tiverton, RI being Map 4-3 Block 223 Card 27 on the Tiverton Tax Assessor's maps closer than the side yard setback currently required in a R80 zoning district.

DECISION: Attorney James Donnelly was present on behalf of Indian Head Realty, Inc., along with Mark DeMello the president and treasurer of Indian Head Realty, Inc. Mr. Donnelly asked if he could exchange the plans that the Board had before them for an exact same site plan except the seal on it of Mr. Higorani will say he is a land surveyor not just a professional engineer. There was no objection from the Board. This plan was marked Exhibit A. Mr. Donnelly introduced into evidence a property record card of the Town of Tiverton for the parcel in question owned by India Head Realty, Inc. This was marked as Exhibit B. Mr. Donnelly further introduced into evidence a plan prepared by William Smith which is the wetlands permit ISDS for new construction. This was marked as Exhibit C.

Mr. Taylor stated at the time that development went in he was Chairman of the Conservation Committee and is familiar with this property in that capacity. He went on

to say he walked the development and went down to inspect the development when the cul de sac was pushed into the wet lands and the whole end of it fell off and sank in the swamp. Mr. Donnelly and his client had no objection to Mr. Taylor sitting in on this petition.

At this time, Mr. Donnelly requested a continuation until next month. Ms. Gescheidt made a motion to continue this petition until next month. Mr. Mello seconded. The vote was unanimous. Voting were: Chairman David Collins, Lise Gescheidt, Jay Jackson, Susan Krumholz and Richard Taylor.

6. A petition has been filed by Global Tower Partners/ T-Mobile Northeast LLC of Boca Raton, FL requesting a special use permit to Article XVI, Section 2 and Article IV, Section 5.d. of the Tiverton Zoning Ordinance in order to construct a 150 foot telecommunications tower at 408 Stafford Road (Rear), Tiverton, RI being Map 4-12 Block 99 Card 74 on the Tiverton Tax Assessor's maps whereby a special use permit is required in a R60 zoning district.

DECISION: Attorney Ricardo Sousa of Prince, Lobel, Glovsky & Tye, LLP, 100 Cambridge Street, Boston, Massachusetts stated he was hired by the applicants Global Tower Partners and T-Mobile to represent them in connection with this application after it was submitted. After reviewing this matter, there is an additional form of relief needed. So at this point, Mr. Ricardo requested a continuance to amend the petition to add a height variance and to allow sufficient time for this petition to be advertised and also have an opportunity to schedule a balloon test which is traditionally done in connection with tower applications. The continuance would allow the public an opportunity to view the balloon test and allow the petitioner to take accurate photo simulation by the proposed tower on this subject parcel so that additional testimony in the form of photo simulation can be submitted to the Board for review together with the plan and the frequency plots that were already submitted as part of the application.

Saturday February 20th, 2010 from 10 a.m. to noon was the date chosen by Mr. Sousa as the balloon test date with an alternate date of Saturday, February 27th in the event there's a snowstorm or a rainstorm. There was no objection from the Board.

The Chairman requested that Mr. Sousa submit a letter of authorization to substantiate that the property owners are aware of the fact he is representing them and is requesting relief on their property for them. Mr. Sousa stated he would do that. Mr. Sousa invited the Board to attend the balloon test. Ms. Krumholz made a motion to continue. Ms. Gescheidt seconded. The vote was unanimous. Voting were: Chairman David Collins, Lise Gescheidt, Jay Jackson, Susan Krumholz and Richard Taylor.

ADMINISTRATIVE ISSUES:

The Chairman stated there were no minutes to review at this time. The Chairman asked if there were any legal issues and Mr. Ruggiero answered no. There was no further business. The Chairman entertained a motion to adjourn. Mr. Jackson so moved. The

vote was unanimous. Voting were: Chairman David Collins, Lise Gescheidt, Jay Jackson, Susan Krumholz, Mike Mello and Richard Taylor.

(Whereupon the Zoning Board of Review meeting of February 3, 2010 was adjourned at 8:50 p.m.)

CERTIFICATE

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing pages 1-7 of the Tiverton Zoning Board of Review meeting held on Wednesday, February 3, 2010, are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 23rd day of February, 2010.

Salvina S. Ferreira, RPR

My Commission Expires: 9/26/13
ID # 28792